STATE OF MICHIGAN

COURT OF APPEALS

PHIL FORNER,

Petitioner-Appellant,

v

ROBINSON TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED
August 23, 2007

No. 269127
Michigan Construction Code Commission
LC No. 06-000006

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Petitioner appeals as of right, pursuant to MCL 125.1518, a decision of the Michigan Construction Code Commission. We affirm.

Petitioner was respondent Robinson Township's mechanical inspector from 1990 to 2005. In 2005, he filled the position of building official on an interim basis for three months. On January 18, 2005, a severe ice jam and flood affected several residences along the Limberlost and Van Lopik neighborhoods in Robinson Township, Michigan. As building official, petitioner issued numerous construction code correction notices to residences on Limberlost Lane and Van Lopik Avenue. Most of the correction notices were for violations of Michigan Residential Code ("MCR") R110.1, which provides that a building will not be used or occupied until a certificate of occupancy has been issued. On July 13, 2005, Robinson Township hired Doug Hopkins as its new building official. Petitioner returned to his former position of mechanical inspector until he was fired in October 15, 2005.

Petitioner informed Hopkins of the previously issued correction notices and new violations. However, according to petitioner, Hopkins took no enforcement action. Petitioner submitted an appeal to the Robinson Township Construction Board of Appeals, contending that the true intent of the MRC has been incorrectly interpreted and that the building official has not enforced the MRC. Petitioner submitted two amendments before the Construction Board of Appeals ("the Board") held a hearing. In the first amendment, petitioner alleged that a temporary occupancy permit issued by Hopkins was defective, as the residence in question failed to comply with the provisions of the MRC. In his second amendment, petitioner submitted "specific questions relating to the applicability of the 2003 [MRC] . . . with regards to the dwelling units located in the area prone to flooding as identified in the original application."

Petitioner and Hopkins testified at the Board hearing. The Board also conducted a site visit to the affected areas before rendering its decision. Thereafter, the Board moved "to grant the [petitioner's] Appeal and to direct Mr. Hopkins to timely and uniformly enforce the applicable provisions of the [MRC] and to use his professional opinion regarding the interpretation of the same." The Board also concluded that "MRC R105.3.1.1 allows the interpretation that absent 50 percent damage, repairs to existing structures may be done without flood resistant material; the lack of damage to homes as revealed by the site visit."

Unsatisfied with this ruling, petitioner submitted an appeal to the Construction Code Commission ("the Commission"), arguing that "Robinson [Township] is not requiring that applications for building permits be made before repairs to or alterations for damage caused by flooding are done; that inspections be done; and that in all instances flood-resistant materials being required to be used when installed below design flood elevation." He requested that "applications for permits are submitted and required permits are obtained before any repairs to or alterations for damage caused by flooding are done; that approval is obtained for all work; and that in all instances flood-resistant materials are used when installed below design flood elevation."

The Bureau of Construction Codes ("the Bureau") denied the appeal, concluding that the Board "granted the relief request[ed] in the initial filing of the appeal;" petitioner's first amendment "was outside the scope of the initial appeal and [it] must be filed separately;" and petitioner's second amendment did "not meet the standard of an appeal." The Bureau found that petitioner was improperly attempting to expand the scope of appeal. Following petitioner's request for reconsideration and the scheduling of a hearing, the Bureau of Construction Codes and Fire Safety Plan Review Division chief Irvin Poke responded that "[the Commission] believe[s] that you received the decision requested from the local board of appeals and your appeal of that decision is moot." Poke indicated that if the petitioner disagreed with this decision, then he could file an appeal with the Commission.

Instead, petitioner filed an appeal with this Court, which was "dismissed for lack of jurisdiction because the December 1, 2005, message from [Poke] is not a decision of the commission." *Forner v Robinson Twp*, unpublished order of the Court of Appeals, issued January 12, 2006 (Docket No. 267329). This Court explained that an appeal pursuant to MCL 125.1518 requires a "decision of the commission." *Id.* This Court determined that the message in question implicated a "staff decision," which is not the same as a "decision of the commission." *Id.*

Petitioner then filed another appeal with the Commission, asserting that the "Bureau staff refused to schedule a hearing before the Commission of a timely filed appeal of a local construction board of appeals' decision to not require enforcement of certain provisions of the 2003 [MRC]." Petitioner argued that as an "interested person," he had the right to appeal a decision of a local construction board of appeals that does not involve a denial of a variance, pursuant to MCL 125.1516. The Commission denied the appeal, supporting the Bureau's "denial for a request for the appeal," based on petitioner having already received "the exact relief requested."

On appeal to this Court, petitioner raises a number of arguments, seeking this Court's interpretation of various provisions within MCL 125.1501 *et seq*. However, as a preliminary

matter, we must address respondent's assertion that petitioner lacks standing to challenge the Commission's decision. We conclude that petitioner was not an interested person and, therefore lacked standing to bring an appeal before the Commission. Whether a party has standing comprises a question of law subject to de novo review. *Lee v Macomb Co Bd of Commr's*, 464 Mich 726, 734; 629 NW2d 900 (2001).

MCL 125.1516 provides that "[a]n interested person . . . may appeal a decision of a board of appeals." Petitioner's conclusory pronouncement that he is an interested person is incorrect. This Court interpreted MCL 125.1516 as authorizing "[a] person aggrieved by the local board of appeals's decision" to appeal to the State Construction Code Commission. *Ypsilanti Twp v Edward Rose Bldg Co*, 112 Mich App 64, 69; 315 NW2d 196 (1981). Our Supreme Court has held "[t]o be aggrieved, one must have some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency." *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006) (citations omitted). This Court has also defined an "aggrieved party" as "one whose legal right is invaded by an action, or whose pecuniary interest is directly or adversely affected by a judgment or order. It is a party who has an interest in the subject matter of the litigation." *Rymal v Baergen*, 262 Mich App 274, 318-319; 686 NW2d 241 (2004). "An aggrieved party is not one who is merely disappointed over a certain result." *Federated Ins Co, supra* at 291. For a litigant to have standing on appeal, there must be "a concrete and particularized injury, as would a party plaintiff initially invoking the court's power." *Id.* A party is not an aggrieved party when a trial court enters an order in that party's favor. *Kocenda v Archdiocese of Detroit*, 204 Mich App 659, 666; 516 NW2d 132 (1994).

Petitioner was not an aggrieved party. The record amply demonstrates that petitioner does not "have some interest of a pecuniary nature in the outcome of the case." *Federated Ins Co, supra* at 291. Petitioner neither resides in nor owns any property in Robinson Township. Significantly, he does not even have "a mere possibility [of a pecuniary interest] arising from some unknown and future contingency." *Id.* Further, petitioner's legal rights were not "invaded by an action." *Rymal, supra* at 318-319. Petitioner's position can best be summed up as an individual who was merely disappointed over a certain result, *Federated Ins Co, supra* at 291, precluding standing to appeal the matter to the Commission. We would note that our Supreme Court has recently reaffirmed its adoption and use of the three-prong test elucidated in *Lujan v Defenders of Wildlife*, 504 US 555; 112 S Ct 2130; 119 L Ed 2d 351 (1992), for determination of standing. *Michigan Citizens for Water Conservation v Nestle Water North America, Inc.*, ___ Mich ___; ___ NW2d ___ (Docket Nos. 130802 and 130803, decided July 25, 2007), slip op at 13-14; *Rhode v Ann Arbor Pub Schools*, ___ Mich ___; ___ NW2d ___ (Docket No. 128768, decided July 25, 2007), slip op at 11-12. We have reviewed these recently published opinions and determine that petitioner could not prevail under the articulated standard.

The Commission affirmed the Bureau's decision to deny petitioner's appeal, by concluding that the petitioner "was granted the relief requested as stated in the staff analysis, and concludes there is nothing to hear." This Court concludes that the reasoning of the Commission and Bureau was flawed, in that petitioner's appeal should have been denied because he was not an "interested person" under MCL 125.1216. Even though based on the wrong reason, a decision that achieves the correct result will be affirmed on appeal. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005).

Finally, although petitioner has raised numerous questions on appeal pertaining to the interpretation of MCL 125.1516 and related statutory provisions, we need not review those questions based on our determination that petitioner lacks standing. *Covert Twp v Consumers Power Co*, 217 Mich App 352, 356-357; 551 NW2d 464 (1996).

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Brian K. Zahra